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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/721,869	11/24/2000	Wayne Mariner Kennard	KEN-1	4066
7590	02/24/2004		EXAMINER	
Wayne M. Kennard 28 Partridge Road Lexington, MA 02241			CHAMPAGNE, DONALD	
			ART UNIT	PAPER NUMBER
			3622	
DATE MAILED: 02/24/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/721,869	KENNARD, WAYNE MARINER
Examiner	Art Unit	
Donald L. Champagne	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 March 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-10 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 24 November 2000 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102 and 35 USC § 103***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4 and 6-9 are rejected under 35 U.S.C. 102(e) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Anderson et al.

4. Anderson et al. teaches (independent claims 1 and 6) a computer-based method for maximizing redemption award units in an award program (para. [0026]), but Anderson et al. does not explicitly teach a shortfall percentage and storing said shortfall percentage. However, under the principles of inherency (MPEP § 2112.02), since the reference invention necessarily performs the method claimed, the method claimed is considered to be anticipated by the reference invention. As evidence tending to show inherency, it is noted that the reference teaches *the number of points needed* (bottom of para. [0027]), which is the mathematical equivalent of a shortfall percentage. Alternately, because percentages are sometimes more meaningful and convenient to work with than absolute values, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Anderson et al. the storage and display of *the number of points needed as a shortfall percentage*.

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5. Anderson et al. does teach AwardPoints as a generic, convertible currency (para. [0037]) and Merriam-Webster's Online Dictionary), which reads on determining a monetary amount. The reference also teaches "a multiplication factor" (*ratio*) in order to combine *several types of award points* and convert them to *AwardPoints* (para. [0031], [0053] and [0054]).
6. Anderson et al. also teaches at the citations given above claims 2-4 and 7-9. The multiplication factor (*ratio*) is the same (claims 2 and 7) when dealing with only one type of point. The multiplication factor is different and weighted (claims 3-4 and 8-9) when dealing with at least two types of points.
7. Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as obvious over Anderson et al.  
Anderson et al. does not teach that the multiplication factor is selected based on chance. Official notice is taken (MPEP § 2144.03) that it was common, at the time of the instant invention, to use chance as a basis for incentive programs. Because there are people especially motivated by games of chance, and the multiplication factor (*ratio*) is a convenient coefficient for introducing chance into the incentive program, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Anderson et al. that the multiplication factor is selected based on chance.

### ***Conclusion***

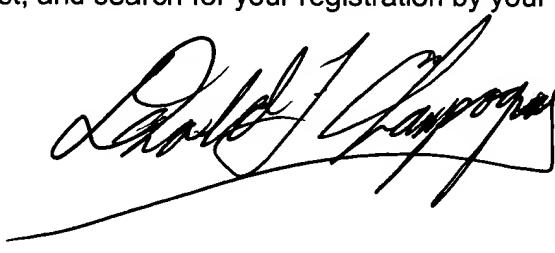
8. **COPY of REFERENCES** - Applicant is entitled to receive a copy of every reference cited by the examiner (except at allowance; MPEP 707.05(a)). Applicant should contact the examiner if a completed form PTO-892 is enclosed, but the cited references are not.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 703-308-3331. The examiner can normally be reached from 6:30 AM to 5 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at [donald.champagne@uspto.gov](mailto:donald.champagne@uspto.gov), and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 703-746-5536.
10. The examiner's supervisor, Eric Stamber, can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-

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9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

**11. ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, [www.uspto.gov](http://www.uspto.gov). At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.

19 February 2004



Donald L. Champagne  
Examiner  
Art Unit 3622